

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CASE NO. 1:14-CV-954**

**STUDENTS FOR FAIR  
ADMISSIONS, INC.,**

**Plaintiff,**

**v.**

**UNIVERSITY OF NORTH  
CAROLINA et al.,**

**Defendants.**

**UNC DEFENDANTS' UNOPPOSED MOTION  
TO TOLL THE DEADLINE FOR ANY MOTION FOR ATTORNEYS' FEES**

The University of North Carolina Defendants respectfully move that the Court toll the deadline for its motion for statutory attorneys' fees until 60 days after all appellate proceedings have concluded in this matter. In support of this motion, the UNC Defendants state the following:

1. On May 28, 2020, the Court granted the UNC Defendants' unopposed motion for partial summary judgment on the pleadings as to Count III of SFFA's complaint. (ECF 210 at 2-3.)
2. After trial, the Court issued its decision on remaining Counts I and II in favor of the UNC Defendants on October 18, 2021. (ECF 254.)
3. In its decision, the Court stated that attorneys' fees and costs would be addressed separately. (ECF 254 at 155.)

4. The Court entered judgment for the UNC Defendants on Counts I and II on November 4, 2021. (ECF 257.)

5. Two days later, on November 6, 2021, SFFA filed a notice of appeal. (ECF 258.)

6. On November 11, 2021, SFFA filed in the Supreme Court a petition for a writ of certiorari before judgment and an accompanying motion to expedite briefing of the petition. Pet. for Cert., *Students for Fair Admissions Inc. v. University of North Carolina*, No. 21-707 (S. Ct.). A decision on the petition remains pending.

7. Under Federal Rule of Civil Procedure 54(d)(2)(B)(i), motions for attorney's fees ordinarily must be filed "no later than 14 days after the entry of judgment." That limit may, however, be altered by "statute or court order." Fed. R. Civ. P. 54(d)(2)(B).

8. In the Middle District of North Carolina, Local Rule 54.2 alters this rule. It requires that motions for fees be filed within 60 days of the entry of judgment. LR54.2.

9. Under this rule, in the absence of an appeal, the UNC Defendants' motion for fees is due by January 3, 2022.

10. The Fourth Circuit has indicated that the filing of a post-judgment appeal tolls the 60-day period. *See Mercer v. Duke Univ.*, 401 F.3d 199, 212 n.7 (4th Cir. 2005) (deferring to the district court's decision to read Local Rule 54.2 to allow a fees motion within 60 days of the appellate court's mandate); *see also, e.g., Design Res., Inc. v. Leather Indus. of Am.*, No. 10-cv-157, 2015 WL 8346599, at \*3 (M.D.N.C. Dec. 8, 2015) (deeming timely a motion for fees that was filed within 60 days of the Fourth Circuit's

mandate). Other courts in this district, however, have suggested that an appeal does not disturb the 60-day deadline to seek fees following entry of judgment. *See, e.g., Lynn v. West*, No. 94-cv-00577, 2000 WL 1229752, at \*2 (M.D.N.C. Aug. 8, 2000).

11. Thus, in an abundance of caution, and to avoid any confusion or uncertainty on the proper timing of a fees motion, the UNC Defendants respectfully request that the Court toll the deadline for any motion for attorneys' fees until 60 days after the final conclusion of all appellate proceedings. Doing so would be in the interest of judicial economy and conserve the litigants' resources. *See, e.g., Bryant v. Woodall*, No. 16-cv-1368 (M.D.N.C. Jul. 12, 2021), ECF 103 (granting a similar motion to toll the deadline for a filing a fees motion until 60 days after appellate proceedings have concluded).

12. Counsel for the UNC Defendants have consulted with counsel for SFFA and counsel for the Student-Intervenors. Intervenors do not oppose this motion. SFFA does not oppose the request but it reserves its right to challenge a fee petition filed by UNC on any and all grounds.

Respectfully submitted, this the 30th day of December, 2021.

SKADDEN, ARPS, SLATE,  
MEAGHER & FLOM, LLP

/s/ Patrick Fitzgerald

Patrick Fitzgerald

Amy L. Van Gelder

Skadden, Arps, Slate, Meagher  
& Flom, LLP

155 North Wacker Drive

Chicago, IL 60606-1720

(312) 407-0700

E: patrick.fitzgerald@skadden.com

E: amy.vangelder@skadden.com

/s/ Lara Flath

Lara Flath

Skadden, Arps, Slate, Meagher  
& Flom, LLP

One Manhattan West

New York, NY 10001

(212) 735-3000

E: lara.flath@skadden.com

*Attorneys for UNC Defendants*

JOSHUA H. STEIN  
ATTORNEY GENERAL

/s/ Stephanie Brennan

Stephanie Brennan

Special Deputy Attorney General

NC State Bar No. 35955

E: sbrennan@ncdoj.gov

/s/ Tamika Henderson

Tamika Henderson

Special Deputy Attorney General

NC State Bar No. 42398

E: tlhenderson@ncdoj.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2021, I filed a true and correct copy of the foregoing with the Clerk of Court using the CM/ECF system, which will be served on all registered users.

Respectfully submitted, this the 30th day of December 2021.

/s/ Patrick Fitzgerald  
Patrick Fitzgerald